

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of	)	
Implementation of Section 621(a)(1) of	)	
the Cable Communications Policy Act of 1984	)	MB Docket No. 05-311
as amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

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**COMMENTS OF THE CITY OF ENUMCLAW, WASHINGTON**

These Comments are filed by the City of Enumclaw in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Enumclaw believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

**Cable Franchising in Our Community**

**Community Information**

Enumclaw, Washington is a city with a population of 11,190. Our franchised cable provider is Comcast Cable. Our community has negotiated cable franchises since 1966.

**Our Current Franchise**

Our current franchise began on February 27, 1995 and expires on February 27, 2010. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the City in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channel (or capacity) devoted to public access; 1 channel (or capacity) devoted to educational access; and 1 channel (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: The Operator provided video production equipment at the beginning of the franchise term, provided equipment for messaging and live/videotaped programming origination, and training. At the

ten year anniversary, the operator replaced the video production equipment, which is currently being paid for by subscribers with a flat \$0.25/month surcharge.

Our franchise contains the following institutional network ("I-Net") requirements: The operator was required to provide bi-directional NTSC standard video and audio capability between City buildings and local schools, which was completed when the operator upgraded the local system in 1998-1999 with a fiber-optic network. We use our I-Net facilities in the following ways: Videoconferencing between City Hall and the Jail for video arraignment of prisoners; as the data network between City buildings; and connecting buildings for our IP phone system, saving local taxpayers thousands of dollars a year.

Our franchise contains the following requirements regarding emergency alerts: The Operator shall provide a character generated scroll override to inform viewers of an emergency, and at the preference of the city, control of the override shall reside within the city or at the regional level. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The Operator shall: Be in compliance with FCC Customer Service obligations 76.309, subpart II (as amended) with telephone response; and to maintain a location within the city to accept payments and to return/exchange converters.

Our franchise contains the following reasonable build schedule for the cable operator: 12 months areas subsequently annexed into the city from the time of the granting of the franchise, subject to the density requirements listed below.

Our franchise requires that the cable operator currently provide service to the following areas of our community: All areas are covered that have at least 32 dwelling units per street mile, equivalent to 8 homes per 1,320 feet; 4 homes per 660 feet; 1 home per 165 feet. At the time of the franchise signing, the entire City was (and still is) provided service under this formula.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: At the end of the 4<sup>th</sup> year of the franchise, the operator was required to upgrade the system to a minimum of 70 channels, which was done in 1999. Any and all future upgrades/services are to be provided to the City within 24 months following 40% of the operator's other cable systems in the King-Pierce-Snohomish County area being furnished such new services. Consequently, Enumclaw has most of Comcast's services, including high definition, On Demand (video on demand), DVR service, and cable modem service.

Our master franchise ordinance contains "level playing field" provisions which state the following: "Any franchise granted shall be nonexclusive. The city specifically reserves the right to grant, at any time, such additional franchises for a cable communications system as it deems appropriate, provided however, that such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to any franchisee." Also: "In the event of one or more franchises being granted the city may require that such subsequential franchisees pay to the city an amount proportionally equal to franchising costs contributed by the initial franchisee. These costs may include but are not limited to such features as access and institutional network costs, bidirectional or equivalent cable installed to municipal buildings and similar expenses.

On the anniversary of the grant of each later awarded franchise, such franchisees shall pay to the city an amount proportional to the amount contributed by the original franchisee, based upon the amount of subscribers held by such franchisees.”

Our franchise contains the following insurance and bonding requirements: “A franchisee shall furnish the city with a certificate of comprehensive liability insurance naming the city as an additional insured. The amount of such policy shall be as deemed appropriate by the city.” For bonding, “The operator(s), if required by the city, shall be required to post a performance bond or other surety acceptable to the city in an amount specified by the city in favor of the city warranting that all restoration work will be done promptly and in a workmanlike manner and that penalties, if any, after final adjudication are paid to the city within 90 days of such finding.”

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Audits, both financial and technical and a public hearing process if the operator is not in compliance to determine if any franchise shall be terminated.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current master franchise ordinance provides that changes in law which affect the rights or responsibilities of either party under any franchise agreement will be treated as follows: “If any portion of this chapter should be inconsistent or conflict with any rule or regulation now or hereafter adopted by the FCC or other federal law, then to the extent of the inconsistency or conflict, the rule or regulation of the FCC or other federal law shall control for so long, but only for so long, as such rule, regulation, or law shall remain in effect; provided the remaining provisions of this chapter shall not be affected thereby.”

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Public hearings are to be held before any granting or renewal of a franchise; any termination of a franchise; and, at the request of the operator, before additional services are required by the city under the upgrade requirements of the franchise.

## Competitive Cable Systems

Our community

- has never been approached by a competitive provider to provide service.
- does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

## Conclusions

The local cable franchising process functions well in Enumclaw. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. **There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.**

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Enumclaw therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Enumclaw, Washington

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